

its score from a PHA) to correct its deficiencies.

§ 902.75 Referral to a Troubled Agency Recovery Center (TARC).

(a) *General.* Upon a PHA's designation of troubled (including troubled in one area), in accordance with the requirements of section 6(j)(2)(B) of the Act and in accordance with this part (or part 901, of this chapter if applicable), REAC shall refer each troubled PHA to the PHA's area TARC for remedial action. Remedial action by the TARC may include referral to the HUB/Program Center for oversight and monitoring. The actions to be taken by HUD and the PHA will include actions statutorily required, and such other actions as may be determined appropriate by HUD.

(b) *Memorandum of Agreement (MOA).* Within 30 days of notification of a PHA's designation as a troubled performer (including substandard categorization), HUD will initiate activities to develop a MOA. The final MOA is a binding contractual agreement between HUD and a PHA. The scope of the MOA may vary depending upon the extent of the problems present in the PHA, but shall include:

(1) Baseline data, which should be raw data but may be the PHA's score in each of the PHAS indicators, sub-indicators or components identified as a deficiency;

(2) Performance targets for such periods specified by HUD (e.g., annual, semi-annual, quarterly, monthly), which may be the attainment of a higher score within an indicator, sub-indicator or component that is a problem, or the description of a goal to be achieved;

(3) Strategies to be used by the PHA in achieving the performance targets within the time period of the MOA;

(4) Technical assistance to the PHA provided or facilitated by HUD, for example, the training of PHA employees in specific management areas or assistance in the resolution of outstanding HUD monitoring findings;

(5) The PHA's commitment to take all actions within its control to achieve the targets;

(6) Incentives for meeting such targets, such as the removal of troubled

designation or troubled with respect to the program for assistance from the Capital Fund under section 9(d) and Departmental recognition for the most improved PHAs;

(7) The consequences of failing to meet the targets include but are not limited to, such sanctions as the imposition of budget and management controls by HUD, declaration of substantial default and subsequent actions, including referral to the DEC for judicial appointment of a receiver, limited denial of participation, suspension, debarment, or other actions deemed appropriate by the DEC; and

(8) A description of the involvement of local public and private entities, including PHA resident leaders, in carrying out the agreement and rectifying the PHA's problems. A PHA shall have primary responsibility for obtaining active local public and private entity participation, including the involvement of public housing resident leaders, in assisting PHA improvement efforts. Local public and private entity participation should be premised upon the participant's knowledge of the PHA, ability to contribute technical expertise with regard to the PHA's specific problem areas and authority to make preliminary/tentative commitments of support, financial or otherwise.

(c) *PHA review of MOA.* The PHA will have 10 days to review the MOA. During this 10-day period, the PHA shall resolve any claimed discrepancies in the MOA with HUD, and discuss any recommended changes and target dates for improvement to be incorporated in the final MOA. Unless the time period is extended by HUD, the MOA is to be executed 15 days following issuance of the preliminary MOA.

(d) *Maximum recovery period.* (1) *Expiration of one-year recovery period.* Upon the expiration of the one-year period beginning on the date on which the PHA receives initial notice of troubled designation (including notice of substandard status) or October 21, 1998, whichever is later, the PHA shall improve its performance, as measured by the PHAS Indicators, by at least 50 percent of the difference between the most recent performance measurement

and the measurement necessary to remove the PHA's designation as troubled or substandard status.

(2) *Expiration of two-year recovery period.* Upon the expiration of the two-year period beginning on the later of the date on which the PHA receives initial notice of troubled designation (including notice of substandard status) or October 21, 1998, the PHA shall improve its performance and achieve an overall PHAS score of at least 60 percent, and achieve a score of at least 60 percent of the total points available under each of PHAS Indicators #1, #2 and #3.

(e) *Parties to the MOA.* An MOA shall be executed by:

(1) The PHA Board Chairperson (supported by a Board resolution), or a receiver (pursuant to a court ordered receivership agreement, if applicable) or other AME acting in lieu of the PHA Board;

(2) The PHA Executive Director, or a designated receiver (pursuant to a court ordered receivership agreement, if applicable) or other AME-designated Chief Executive Officer;

(3) The Director of the area TARC; and

(4) The appointing authorities of the Board of Commissioners, unless exempted by the TARC.

(f) *Involvement of resident leadership in the MOA.* HUD encourages the inclusion of the resident leadership in the execution of the MOA.

(g) *Failure to execute MOA or make substantial improvement under MOA.* (1) If a troubled PHA fails or refuses to execute a MOA within the period provided in paragraph (b) of this section, or a troubled PHA operating under an executed MOA does not show a substantial improvement, as provided in paragraph (d) of this section, toward a passing PHAS score following the issuance of the failing PHAS score by REAC, the TARC shall refer the PHA to the DEC in accordance with § 902.77, and the DEC shall take the actions required by § 902.77(a)(2).

(2) For purposes of this paragraph (g), *substantial improvement* is defined as the improvement required by paragraphs (d)(1) and (d)(2) of this section. The maximum period of time for remaining in troubled status before being referred

to the DEC is two years. Therefore, the PHA must make substantial improvement in each year of this two year period.

(3) The following example illustrates the provisions of paragraph (g)(1) of this section:

EXAMPLE: A PHA receives a score of 50 percent; 60 percent is a passing score. The PHA is referred to the TARC. Within one year after the score is issued to the PHA, the PHA must achieve a 55 (50% of the points necessary to achieve a passing score of 60 points) to continue recovery efforts in the TARC. In the second year, the PHA must achieve a minimum score of 60 points (a passing score). If in the first year, the PHA fails to achieve the five-point increase, the PHA will be referred to the DEC. If in the first year, the PHA achieves the five-point increase but fails to achieve a passing score in the second year, the PHA will be referred to the DEC. The maximum period of time for remaining in troubled status before being referred to the DEC is two years.

(h) *Audit review.* For a PHA designated as troubled, REAC will perform an audit review and may, at its discretion, select the audit firm that will perform the audit of the PHA and REAC may, at its discretion, serve as the audit committee for the audit in question.

(i) *Continuation of services to residents.* To the extent feasible, while a PHA is under a referral to a TARC, all services to residents will continue uninterrupted.

§ 902.77 Referral to the Departmental Enforcement Center (DEC).

(a) *Referral of Troubled PHA to the DEC for failing to execute or meet MOA requirements.* (1) Failure of a troubled PHA to execute or meet the requirements of a MOA in accordance with § 902.75 constitutes a substantial default under § 902.79 and may result in referral of the PHA to the DEC. The TARC will recommend to the Assistant Secretary for Public and Indian Housing that a troubled performer PHA be declared in substantial default. In accordance with § 902.69, the Assistant Secretary shall notify the PHA of the default and allow the PHA an opportunity to cure the default. A PHA shall be referred to the DEC if the PHA fails to cure the default within the a period